



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:)
)
) ISCR Case No. 12-08783
)
Applicant for Security Clearance)

Appearances

For Government: Candace L. Garcia, Esq., Department Counsel
For Applicant: *Pro se*

03/01/2016

Decision

CERVI, Gregg A., Administrative Judge:

Applicant has not mitigated the financial considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

Applicant completed a Questionnaire for National Security Positions (SF 86) on March 12, 2012. On January 27, 2015, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations. The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented by the DOD on September 1, 2006.

Applicant responded to the SOR on March 3, 2015,¹ and elected to have the case decided on the written record in lieu of a hearing. The Government's written brief with supporting documents, known as the File of Relevant Material (FORM), was submitted by Department Counsel on May 18, 2015.

A complete copy of the FORM was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM on May 29, 2015. He did not file a response to the FORM within the time allowed, nor did he assert any objections to the Government's evidence.

The case was assigned to me on February 23, 2016. The Government exhibits included in the FORM (Items 1 to 7) are admitted into evidence without objection.

Findings of Fact

The SOR alleges four delinquent debts totaling approximately \$66,988, including delinquencies for unpaid child support (SOR ¶ 1.a - \$12,306), a credit card (SOR ¶ 1.b - \$139) federal taxes (SOR ¶ 1.c - \$39,543) and a monetary judgment (SOR ¶ 1.d \$15,000). Applicant admitted all the allegations in the SOR.² The evidence submitted with the FORM substantiates the SOR allegations.³

Applicant is 39 years old and is employed by a defense contractor as a machinist. He attended college but did not earn a degree. He was married in 2001 and divorced in 2007. On his March 2012 security clearance application (SCA), Applicant reported that he had one child, however during his interview with an Office of Personnel Management investigator, he reported an additional child.⁴

Applicant became delinquent on financial obligations because of inconsistent income while he worked as a self-employed business owner from 2001 to 2010. Since 2010, he has been employed full-time, first as a structural fitter, and currently as a machinist. Despite full-time employment since 2010, Applicant has provided no documentary evidence to show resolution of his delinquent debts. He stated that his delinquent debts generally resulted from an inconsistent income during this period, and his tax delinquency was due to a bookkeeper's error and lost records during his divorce. He noted that he is making efforts to resolve his financial delinquencies through automatic payments to state child support authorities, consultation with federal tax officials and by hiring an attorney that specializes in debt consolidation.

¹ The Answer was signed and dated February 20, 2015, and notarized on March 3, 2015.

² Items 1, 2.

³ Items 2-7.

⁴ Items 3, 4.

No documentary evidence was submitted with Applicant's Answer or in response to this FORM to support Applicant's claimed payments toward or substantial efforts to address, any of the SOR debts. Additionally, he did not submit evidence of credit counseling or budget education. I was unable to evaluate his personal credibility, demeanor, or character since he elected to have his case decided without a hearing.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, administrative judges apply the guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel." The applicant has the ultimate burden of persuasion to obtain a favorable security clearance decision.⁵ In *Department of Navy v. Egan*⁶, the Supreme Court stated that the burden of proof is less than a preponderance of the evidence.⁷

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security." It is well-established law that no one has a right to a security clearance. As noted by the Supreme Court in *Egan*, "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials." Under *Egan*, Executive Order 10865,

⁵ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan.27, 1995).

⁶ *Department of Navy v. Egan*, 484 U.S. 518, 528 (1988) ("it should be obvious that no one has a 'right' to a security clearance"); *Duane v. Department of Defense*, 275 F.3d 988, 994 (10th Cir. 2002) (no right to a security clearance).

⁷ *Egan*, 484 U.S. at 531.

and the Directive, any doubt about whether an applicant should be allowed access to classified information will be resolved in favor of protecting national security.⁸

The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F, Financial Considerations

The security concern for financial considerations is set out in AG ¶ 18:

Failure or inability to live within one’s means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual’s reliability, trustworthiness and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. The following are potentially applicable in this case:

- (a) inability or unwillingness to satisfy debts; and,
- (b) a history of not meeting financial obligations.

Applicant has long-standing delinquent debts that he is unable or unwilling to resolve. The evidence is sufficient to raise the above disqualifying conditions.

⁸ *Egan*, 484 U.S. at 531.

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following are potentially applicable:

- (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;
- (b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances;
- (c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control; and
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant has been employed full-time since 2010 after an extended period of inconsistent income from working as a self-employed businessman. Since that period, Applicant has provided no documentary evidence to show resolution of the debts. In addition, he has been complacent about addressing these long-standing financial obligations, even after beginning full-time employment in 2010.⁹

Applicant stated he is addressing SOR ¶ 1.a through the automatic deduction from his pay, but he has not fully explained the circumstances surrounding his child support delinquencies or his progress toward resolution. The debt to the state child support agency remained on his September 2014 credit report, well after he started his full-time employment in 2010. Applicant has not offered documentary evidence to show his current child support payments are actually being made, the current status of the account or that the arrearages have been or are being addressed.

Applicant stated that the debt in SOR ¶ 1.b is being resolved, however no evidence of its resolution has been offered. Likewise, at the time of his answer to the SOR, the IRS lien (SOR ¶ 1.c) and the collection agency judgment (SOR ¶ 1.d) had not been resolved, although Applicant claimed that he was working with the IRS and a debt consolidation attorney to address them. The fact that resolution of the majority of his debts were not addressed when Applicant began full-time employment in 2010, or in the ensuing years since, despite the multiple indications he had that these matters raise security concerns, leaves me with doubts about Applicant's ability or willingness to face his financial responsibilities.

⁹ It is reasonable to expect that Applicant would have been on notice of the Government's financial security concerns when he first completed the financial questions on his SCA, and again when he received the SOR and FORM.

There is insufficient evidence for a determination that Applicant's financial problems will be resolved within a reasonable period. I am unable to find that he acted responsibly under the circumstances or that he made a good-faith effort to pay his debts. His financial issues are recent and ongoing. They continue to cast doubt on his current reliability, trustworthiness, and good judgment. None of the above mitigating conditions are applicable.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. I considered all of the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my findings of fact and comments under Guideline F in this whole-person analysis.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant did not mitigate the financial considerations security concerns.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	Against Applicant
Subparagraphs 1.a - d:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Gregg A. Cervi
Administrative Judge